

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-185345

DATE: March 25, 1976

MATTER OF: Eocom, Inc.

60672

98453

DIGEST:

1. Protest involving alleged specification defects, improper listing of procurement in Commerce Business Daily, and alleged improper preaward rulings is untimely filed under Bid Protest Procedures because, even if letter transmitted with protester's proposal is considered a protest, protester did not submit formal protest to GAO within 10 working days from date of receipt of Navy's adverse decision on alleged protest.
2. Although request by bidder or interested party for review of procurement procedures need not contain exact words of protest to be characterized as formal protest, request should reasonably be understood as lodging of specific exceptions to questioned procedures. Based on review of letter allegedly constituting protest, encouragement of informational exchange, rather than filing of protest through listing exceptions, is seen.
3. GAO does not agree that untimely protest questioning propriety of brand name or equal specification or any other issue raised by protest involves questions of widespread interest sufficient to permit consideration of protest under "significant issue" exception to timeliness requirements of Bid Protest Procedures.

On November 12, 1975, a protest was received from Eocom, Inc. (Eocom), against allegedly improper acts of the Naval Research Laboratory under request for proposals (RFP) No. N00173-75-R-B117 which was issued on August 4, 1975, for a "Scanning Michelson Interferometer System" under a brand name (Carson Systems IAC Model 1000) or equal purchase format. Specifically, Eocom alleged:

- (1) The procurement should not have been made under the "brand name or equal" technique primarily because

Carson Systems had never built the cited model but also because a "research and development" procurement approach would have been more appropriate.

(2) The RFP was improperly synopsisized in the Commerce Business Daily.

(3) Many of the RFP's specifications were inappropriate.

(4) Delivery requirements were inappropriate.

(5) Some of Navy's preaward rulings were inappropriate.

Navy urges that Eocom's entire protest is untimely filed under our Bid Protest Procedures. It contends that the first four grounds of Eocom's protest had to have been known prior to the September 5, 1975, closing date for submission of initial proposals. Notwithstanding Eocom's knowledge of these grounds of protest prior to the September 5 closing date for the RFP, Navy asserts that Eocom did not file a protest with our Office until November 12. Consequently, in Navy's view, the first four grounds of protest are untimely filed with us because they were not filed either prior to the RFP's initial closing date (in the case of the alleged specification defects--grounds of protest 1, 3, and 4) or within 10 working days from September 5 (in the case of the complaint about the allegedly improper listing in the Commerce Business Daily).

The fifth ground of protest also must be considered untimely filed, in Navy's view, because it relates to a ruling of the contracting officer which was received by Eocom on October 22, 1975. Since Eocom did not file its protest with our Office over this ruling until November 12, 1975, (or more than 10 working days after the ground of protest was known by Eocom on October 22), the Navy urges that the protest was untimely filed under section 20.2(b)(2) of our Bid Protest Procedures.

Eocom insists that it raised all grounds of protest in its September 3, 1975, cover letter to its initial proposal for the RFP and thus submitted a timely initial protest with the Navy. Specifically, Eocom says that a reading of page two of its cover letter shows that it was protesting the brand name specification by submitting an alternate cost proposal rather than the fixed-priced proposal required under the RFP.

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Although a request by a bidder or interested party for review of procurement procedures need not contain exact words of protest to be characterized as a formal bid protest (Johnson Associates, Inc., 53 Comp. Gen. 518 (1974), 74-1 CPD 43), it is clear that the request should reasonably be understood as the lodging of specific exceptions to the questioned procedures. Based on our review, we do not consider that specific exceptions are reasonably seen in the cover letter.

The first page of the letter merely recited the qualifications of Eocom and the merits of the company's proposal. Page two of the letter continued a description of the company's merits advanced on page one. Although the second page of the letter recited that the "total [Navy] specification * * * has not been developed by any company and at best is in the concept * * * phase"--thus requiring Eocom to submit two "bids"--both "bids" are termed "responsive" to the RFP's technical specifications with certain "minor" exceptions present in the fixed-price "bid" submitted. The final paragraph of the letter merely encouraged the Navy to contact Eocom about "any questions * * * concerning * * * aspects of our bid and proposal." Since Eocom was submitting essentially "responsive" proposals under the RFP, we think the letter merely encouraged an informational exchange between the Navy and Eocom about the existing specification and did not constitute a protest. Indeed, the Navy apparently did not understand this letter to be a protest in any sense.

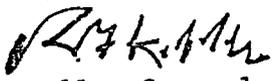
In any event, should Eocom's September 3, 1975, cover letter be considered a protest, it is clear that the Navy's October 20, 1975, message, received by Eocom on October 22, effectively denied the protest because it did not change the "brand name or equal" purchase description about which Eocom now takes exception. Eocom was therefore obliged, under our Bid Protest Procedures, to file a protest with our Office within 10 working days from the October 22 receipt of the Navy's adverse action on its protest. Since Eocom's November 12 protest was filed with our Office more than 10 working days after October 22, its protest is still considered untimely.

Alternatively, Eocom urges that we consider its protest, even if we find it to have been untimely filed, because it contains issue(s) significant to procurement practices. The issue considered significant by Eocom involves Navy's "issuance of a solicitation for a brand name system or equal, when the brand name system does not, in fact, exist."

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"Issues significant to procurement practices or procedures" refer to the presence of principles of widespread interest and not necessarily to the sums of money involved. Fairchild Industries, Inc.--request for reconsideration, B-184655, October 30, 1975, 75-2 CPD 264; 52 Comp. Gen. 20 (1972). We do not agree that the propriety of the brand name or equal specification here or any other issue raised involves questions of widespread interest.

Eocom's protest will not be further considered.


Deputy Comptroller General
of the United States